

**BEFORE THE LAND USE HEARINGS EXAMINER
CLARK COUNTY, WASHINGTON**

REGARDING THE APPLICATION FOR A)	FINAL ORDER
PRELIMINARY PLAT TO SUBDIVIDE)	
APPROXIMATELY 4.7 ACRES INTO 16 SINGLE-)	WORK DEVELOPMENT
FAMILY LOTS IN THE R1-10 ZONING DISTRICT)	SUBDIVISION
WITH AN ADMINISTRATIVE VARIANCE TO THE)	
LOT WIDTH REQUIREMENTS IN THE R1-10)	PLD2004-00061; SEP2004-
ZONING DISTRICT IN THE UNINCORPORATED)	00114; VAR2004-00014;
CLARK COUNTY, WA.)	WET2004-00026; ARC2004-
		00039

APPROVED WITH CONDITIONS

INTRODUCTION

The Applicant proposes to divide the subject site into 16 single-family residential lots with an administrative variance request for the lot width requirements for Lots 1, 2, 6, and 9. All lots in the proposed subdivision will access the on-site public road system to NE 29th Avenue. The area surrounding the site is all zoned R1-10 and all uses are single family residential. The site is relatively flat and contains small Category 4 exempt wetlands.

Location: 17216 NE 29th Avenue; Legal Description: Tax Lots 15 (181908) in the Northeast quarter of Section 14 Township 3 North, Range 1 East of the Willamette Meridian;

Applicant: Moss & Associates Inc.
Attn: Steve Marsh
717 NE 61st Street, Suite 202
Vancouver, WA 98665

Owner: Ron & Carol Fields
17216 NE 29th Avenue
Ridgefield, WA 98642

Comp Plan: Urban Low Density

Zoning: R1-10

Applicable Laws: Clark County Code Chapters: 40.220.010 (Residential Districts); 40.350 (Transportation, Concurrency, and Circulation Standards); 40.370.010 (Sewer); 40.370.020 (Water); 40.380 (Stormwater and Erosion Control); 15.12 (Fire); 40.500.010 (Procedures); 40.510.030 (Type III Process); 40.550.020 A (Administrative Variance); 40.540.040 (Subdivisions); 40.570 (SEPA); 40.6 (Impact Fees); and RCW 58.17 (State Platting Laws)

HEARING AND RECORD

The Public Hearing on this matter was held on October 14, 2004 and the record was closed at the conclusion of the hearing. A record of all testimony received into the record is included herein as Exhibit A (Parties of Record), Exhibit B (Taped Proceedings), and Exhibit C (Written Testimony). These exhibits are filed at the Clark County Department of Community Development.

The Examiner has conducted an unaccompanied site visit prior to the Hearing. The County has not received written public comments prior to the issuance of the Staff Report regarding the proposal.

Richard Daviau, the County's lead planner on this application, provided an overview of this application and its associated staff report. Mr. Daviau noted that staff objects to the Applicant's proposal of using public easements to construct sidewalks; staff is also concerned about lot size and dimension. However, there is an administrative variance covering this issue, and staff is recommending approval of the administrative variance.

He reviewed the exhibits that have come in since the staff report was issued on September 29, 2004. Exhibits 20, 21, and 23, the last of which is worth noting. This is an email containing a road cross-section, and recommending a condition change. We don't feel comfortable with their language, but suggest changing Condition A-4 to read "The final plat shall be consistent with Exhibit 23." Exhibits 24, 25, 26 and 27 also came in after the staff report was issued. Exhibit 27 is a letter from Chris Horn of the Prosecuting Attorney's office, covering the issue of placing the sidewalks and clear spaces in a public easement. If we adopt Staff's position will the Applicant lose a lot in consequence? The Examiner asked. At least one lot, and possibly two, Mr. Daviau replied. He noted that the main issue addressed in Exhibit 27 is the definition of right-of-way; Mr. Horn is recommending that the sidewalks and clear spaces be considered public right-of-way. Mr. Daviau said staff is recommending approval of this application, subject to the conditions specified in the staff report.

Marilee Pabst, an attorney representing the Applicant, said the Applicant accepts the staff's conditions of approval, but disagrees with staff's conclusions about lot size, and the placement of sidewalks and clear spaces being located in public areas. She noted that the lot size issue is addressed in a letter to staff (Exhibit 15). With respect to the placement of the sidewalks, the Applicant is clearly within his rights in making this proposal. She noted that the same proposed sidewalk configuration was previously approved in the Wark Subdivision. Staff's

recommendation is not consistent with code; staff cannot legislate changes to the code. We're not required to comply with these criteria. Prairie Park subdivision also involved a management decision in similar circumstances, and the hearings Examiner ruled that he was not bound by staff's recommendation. The sidewalk easements are permitted, under existing code.

With respect to the lot size issue, the County again approved this same design for the same Applicant in Wark Subdivision – that the sidewalk easement is not required to be excluded from the lot area calculation. It is clear that the sidewalks are not streets, so they are not required to be excluded from the calculation. She added that the Taylor Place ruling is not applicable to this application; again, sidewalk easements are not right-of-way, so the Taylor Place ruling is not on point. With respect to Exhibit 27, she said it is clear that the code treats sidewalks and streets differently. However, that's just a definition – it's not regulation, the Examiner observed.

For all these reasons, the Applicant asked that Condition A-1 be deleted. Ms. Pabst submitted copies of the decisions used in support of her testimony to the record, as well as the outline of her testimony. The Applicant also requested clarification of Condition A-6, regarding sight distance, because this would be an offsite improvement, which can be required only if the new development significantly and detrimentally impacts the existing condition.

Geraldine Plumlee, the adjoining property owner, congratulated the developer, saying she is delighted that the property is being developed along the R-10 standard. However, in the mitigation portion of the transportation concurrency plan, I wonder what will happen if the traffic impacts turn out to be worse than expected. Is there any recourse if their traffic study turns out to be wrong? The Examiner noted that this is a small development and that there are few existing traffic problems in the neighborhood. Ms. Plumlee said she is concerned about sight distances, and what will happen if problems do occur. The Examiner replied that there is a process through which the County can enforce the improvements required under the conditions of approval. If the system works the way it is supposed to work, then you will have recourse.

Another major concern is the stormwater issue, Ms. Plumlee continued. She said a swale is supposed to be constructed to convey stormwater to an existing drainage ditch on NE 20th. That is a typographical error, Mr. Safayi replied – it should be 29th Avenue. Also, Ms. Plumlee moved on, the person who completed this application said the property slopes to the northeast; that is not correct – it slopes to the southwest. The Applicant also says that 45% of the property will be covered with impervious surfaces; I wonder how much water we're going to see from this, so a condition of approval should be added to say that drainage of some sort will be built between our properties, along the south property line. Also, the Applicant doesn't mention any of the nut trees along the west side of the property – does the County require a tree permit for approval? Otherwise, it looks like a very good plan, Ms. Plumlee concluded.

Ken Reinoehl, also a resident of lot 4 in University Place, said he has had heavy runoff into his property throughout the winter. He, too, requested that a drainage system be placed between

the two developments.

On Staff's response Mr. Daviau said that, with respect to the public easement question, he was unaware that the first Wark development allowed a similar configuration. Also, he said, we firmly believe that this is covered under "an interest therein," and should not be included in the lot area. With respect to the joint driveway issue, joint driveways are private, and what the Applicant is proposing is a public easement. With respect to Taylor Place, I think the board stated pretty clearly what they mean on this issue. With respect to Ms. Plumlee's testimony regarding the unfinished sidewalks in a nearby development, he invited her to call him directly. With respect to tree removal, Clark County does not have a tree removal ordinance, except on sites that have sensitive lands. However, the Department of Natural Resources does regulate tree removal over a certain number of board feet.

Ali Safayi, the County's engineering representative on this application, spoke to the transportation and stormwater issues. With respect to the requested clarification on Condition A-6, there are two sight distances which may be a problem – stopping sight distance along NE 29th, and intersection sight distance. For the County to require that the Applicant fix this, it must show nexus. The project generates approximately 150 ADT – a small impact. Therefore, there wouldn't be any nexus to require the Applicant to remedy this problem. Corner sight distance is another matter, because it is the Applicant that is creating this problem. Therefore, Condition A-6 can be clarified to indicate that corner sight distance shall be in compliance with the code.

Regarding stormwater, there appears to be a high point along the south side, with some potential for runoff to the southwest. Lots are supposed to be sloped by 2% toward the street, once they're graded, and that should improve the situation over the existing condition. What about the request for drainage along the boundary? The Examiner asked. County code is very clear, Mr. Safayi replied; however, it does not preclude runoff in sheet flow to a place where it was going before, provided that it is not concentrated or increased over what was coming from this site before. This issue should be addressed during engineering review; our staff will look for these issues and ensure that the Applicant remedies them.

On Applicant's rebuttal, Mr. Howard Stein, a professional traffic engineer representing the Applicant, suggested a solution to the stopping site distance issue. He suggested that the staff report be modified under Finding 14 on Page 8 to say "intersection sight distance." he also suggested modified language for A-6, citing specific code sections. He said the traffic study shows that it will be possible for the Applicant to meet the intersection criteria under County code. Mr. Safayi said he has no objections to the changes Stein proposed. The Applicant would be happy to contribute to the cost of an "Impaired Sight Distance" sign to be placed near the development, Mr. Stein concluded. Finally, Ms. Pabst reiterated that the Applicant disagrees with Mr. Daviau that Taylor place decides this issue.

FINDINGS

Only issues and approval criteria raised in the course of the application, during the hearing or before the close of the record are discussed in this section. All approval criteria not raised by staff, the Applicant or a party to the proceeding have been waived as contested issues, and no argument with regard to these issues can be raised in any subsequent appeal. The Examiner finds those criteria to be met, even though they are not specifically addressed in these findings. The following issues were either raised by the Applicant, addressed by staff in its report, or by agency comments on the application, and the Examiner adopts the following findings with regard to each:

LAND USE:

Finding 1 – Lot Standards

The proposed subdivision is located in the R1-10 Zone which requires a minimum lot size of 10,000 square feet. The submitted preliminary plat identifies lots that appear to have a minimum size of 10,000 square feet; however, staff is concerned regarding the Applicant's lot area calculations. Sidewalks and road clear spaces are proposed within public easements (4.5, 8.5, or 9.5 in width).

In Exhibit 15, the Applicant's attorney appears to argue that the density calculations do not permit inclusion of streets or alley right of ways in the lot area calculations. The definition of street does not include sidewalks. Only public right-of-ways designed for vehicular use can be defined as streets. Therefore, all one has to do is to place the sidewalk in a public easement and presto the calculation of lot size now can include that portion of the lot used by the public for walking, whereas if it was a mere part of a street it could not. The Applicant's opinion clearly implies that the choice of whether the sidewalk is part of street right-of-way or part of an easement is one of developer's convenience alone. Since placement of sidewalks on easements would always increase the amount of land available for lots, and thus enable creation of more lots, one would wonder why no one seems to have thought of this before or why this would not now become the rule rather than an exception.

Staff does not support this concept. On October 14, 2004 Deputy Prosecuting Attorney entered the fray (Exhibit 27). His argument seems to focus on the fact that it is the street right-of-way and not just the a street that is to be excluded from the lot size calculation. County Code 40.2000.040(C) states:

Lot area is the computed area contained within the lots lines excluding street or alley right-of-way; except for areas designated industrial urban reserve, urban reserve, urban holding, rural five (5), ten (10) and twenty (20), agricultural and forest, land dedicated or acquired hereinafter for public right-of-way shall not be excluded from the calculation of lot sizes.

“Right-of-way” means a general term denoting public land, property or interest there in, usually a strip acquired for or devoted to transportation purposes.

“Street” or “road” means all roads, streets, highways, freeways, easements, and public right-of-way used or designed for vehicular access or use, including private roads.

Chris Horne’s key argument appears to be that the public sidewalk when placed on an easement would be an “interest” in land and thus part of the transportation purpose right-of-way which could not be used in computing the lot area. Pedestrians are clearly a part of the transportation infrastructure and are listed in the purpose section of the road standards.

Finally there is Management Decision - DS 1032 which states that sidewalks may be allowed within easements only where it is demonstrated that such sidewalks cannot be located within the established public-right-of-way due to natural features that should be preserved.

That policy clearly makes sense and a desire to protect a valuable tree or a wetland buffer should not count against the lot size area. Similarly, calling a detached sidewalk an easement when in every other respect it functions as part of regular street scape sidewalk, simply to evade the lot calculation requirements would seem arbitrary. Section 40.350.010 Pedestrian/Bicycle circulation standards clearly contemplate a right-of-way which includes sidewalks as well as the parking strip between the roadway and the sidewalk within the right-of-way calculations. It is also true that the “right-of-way” seems to be used without the legal precision, as it appears to be used sometimes in lieu of road or street and sometimes as an aggregate of street related uses. For the reasons stated I agree with the analysis of the Prosecuting Attorney’s office (Exhibit 27).

Finally reference is made without specific quote or analysis to various Examiner decisions purporting to support various arguments (See Hearing above). While sending the Examiner on a fishing expedition to search out nuggets of supporting language for one’s argument is a good labor saving device for the proponent of an argument, I find it unhelpful. Moreover, I do not find any relevant reference in any of the cases alluded to and no specific prior instance of where lot area calculations were impacted by simply moving the ownership of the sidewalk from public right-of-way to a public easement. It is true that Mr. Epstein in the Prairie Park PUD Decision (Exhibit 29, page 6) found the Management Decision not binding, but neither do I. In this instance however, I find it persuasive and the only logical way to treat the issue of when to allow location of the sidewalks in an easement and the right-of-way.

I also find that lot area requirements cannot be evaded by legal artifice which is uncalled for by any other development circumstance, such as topography or the desire to protect something of value, but simply to alter the meaning of the lot area requirement. While sidewalks can clearly be placed in public easements, not placing them in the public right of way would require special circumstances and justification.

The final plat should identify sidewalks and clear spaces within right-of-way to be dedicated not public easements; therefore, not included within lot areas of all lots. Staff acknowledges that there will be a loss of one or two lots. (See Condition A-1)

The proposed plat complies with the minimum lot dimensional standards with exception of lot

width requirements for Lots 1, 2, and 6. (See Finding 2 below)

Finding 2 – Administrative Variance

The Applicant has requested an administrative variance request for the lot width requirements for Lots 1, 2, 6, and 9; however, it appears Lot 9 meets the minimum standard. Staff has reviewed the proposed variance against the criteria of 40.550.020 A3 (a through d). The following is response to the four criteria:

The granting of this variance will not substantially detract from the livability or appearance of the residential area. The proposed average lot widths are approximately 75 feet.

- a. The reduction in five feet would not be perceptible to surrounding residents. In addition, the lot sizes and building envelopes are equal to the other lots in the development. Therefore, staff believes this criterion is met.
- b. Only one variance is requested, so there are no cumulative effects to be considered.
- c. Staff finds there are no adverse impacts because the buildable area of the lots will be equal to other lots in the development, allowing home construction similar to other lots.
- d. This criterion is not applicable because the proposed variance will not impact pedestrian or vehicular access.

Based on the above findings, the proposal complies with the administrative variance criteria and is approved.

Finding 3 – Setbacks

Although details of home construction on the proposed lots have not been provided at this time (and were not required), the following setbacks apply to the proposed plat:

- Twenty foot front setback for all buildings
- Ten foot street side setback for lot 13 along Public Court “C” and lot 12 along Public Court “B”
- Five foot standard setback for all other side and rear setbacks in the plat

A note on the plat is warranted that identifies setback requirements (see Plat Note C-1).

Finding 4 – Existing Structures

The Applicant has indicated in the SEPA Checklist that two mobile homes exist on the site and they will be removed. It appears from the aerial photo of the site that there are also accessory structures on the site. All existing structures on the site should be removed prior to final plat approval (see Condition A-2)

Finding 5 – Manufactured Homes

The Applicant has not indicated that manufactured homes would be placed on the lots in the proposed plat. Therefore, pursuant to CCC 18.406.020(U), manufactured homes are prohibited on any lot in this plat (see Plat Note C-2).

Finding 6 - State Platting Standards (RCW 58.17)

With conditions of approval, staff finds the proposed subdivision will make appropriate

provisions for the public health, safety, and general welfare. Connection of the proposed residences to public water and sewer, as well as treatment of any increase of stormwater runoff, will be provided, to protect groundwater supply and integrity. Impact Fees will also be required to contribute a proportionate share toward the costs of school, park and transportation provisions, maintenance and services.

WETLANDS:

Finding 7

The site contains a Category 4 wetland that is approximately 3320 square foot in size. This wetland is exempt per CCC 40.450.010 (C) (1) because it is less than 10,000 square foot. No further wetland review is required.

ARCHEOLOGICAL:

Finding 8

The proposal is located within a high probability area for containing cultural resources. An archaeological predetermination was completed for the site by the County Archaeologist which included walk over meandering transects and five shovel test probes (see Exhibit 7). No archaeological items were found. Archaeological Services of Clark County recommends that no further archaeological work is necessary. If any cultural resources are discovered in the course of development construction, the Office of Archaeology and Historic Preservation in Olympia and Heritage Trust of Clark County should be notified. Failure to comply with these State requirements may constitute a Class C felony, subject to imprisonment and/or fines (see Condition C-3).

TRANSPORTATION CONCURRENCY:

Finding 9 – Concurrency

County concurrency staff has reviewed the proposed subdivision consisting of 16 single-family residential lots. The Applicant's traffic study has estimated the weekday AM peak hour trip generation at 12 new trips, while the PM peak hour trip generation is estimated at 16 trips. The Applicant submitted a traffic study for this proposal in accordance with CCC 40.350.020B and is required to meet the standards established in CCC 41.350.020G for corridors and intersections of regional significance. The County's TraffixTM model includes the intersections of regional significance in the area and the County's model was used to evaluate concurrency compliance.

Site Access - Level of Service (LOS) standards are not applicable to accesses that are not regionally significant; however, the LOS analysis provides information on the potential congestion and safety problems that may occur at the site access to the arterial and collector network (NE 29th Avenue). The access appears to maintain acceptable LOS.

Operating LOS on Corridors - The proposed development was subject to concurrency modeling. The modeling results indicate that the operating levels comply with travel speed and delay standards. The Applicant should reimburse the County for costs incurred in running the concurrency model (See condition A-3)

Concurrency Compliance - The proposed development complies with the Concurrency Ordinance CCC 40.350.020.

Finding 10 - Safety

Where applicable, a traffic study shall address the following safety issues:

- traffic signal warrant analysis
- turn lane warrant analysis
- accident analysis
- Any other issues associated with highway safety

Mitigation for off-site safety deficiencies may only be a condition of approval on development in accordance with CCC 40.350.030(B)(6) The code states that “nothing in this section shall be construed to preclude denial of a proposed development where off-site road conditions are inadequate to provide a minimum level of service as specified in Section 40.350.020 or a significant traffic or safety hazard would be caused or materially aggravated by the proposed development; provided, that the Applicant may voluntarily agree to mitigate such direct impacts in accordance with the provisions of RCW 82.02.020.”

Traffic Signal Warrants - Signal warrants are not met at any of the subject intersections analyzed in the Applicant’s traffic study.

Turn Lane Warrants - Turn lane warrants are evaluated at unsignalized intersections to determine if a separate left or right turn lane is needed on the uncontrolled roadway. The Applicant’s traffic study analyzed the roadways in the local vicinity of the site to determine if turn lane warrants are met. Turn lane warrants were not met at any of the unsignalized intersections analyzed in the Applicant’s traffic study; therefore, mitigation is not required.

Historical Accident Situation - The Applicant’s traffic study analyzed the accident history at the regionally significant intersections; however, all of the historical accident rates at these intersections are below 1.0 accidents per million entering vehicles. Therefore, mitigation by the Applicant is not required.

Traffic Controls During Construction - During site development activities, the public transportation system (roadways, sidewalks, bicycle lanes, etc.) may be temporarily impacted. In order to minimize these impacts and coordinate work occurring in the public right-of-way, the Applicant will need to prepare and have approved a Traffic Control Plan. (See Condition B-2)

The Applicant shall maintain all existing signs within the public right of way within the limits of the development's construction until the public roads have been accepted by the County. The developer shall install and maintain temporary signs where the development's signing and striping plan shows new or modified warning or regulatory signs. New or modified temporary signing shall be installed when any connection is made to the public road network. The developer shall remove the temporary signs immediately after the County installs the permanent signing and striping.

TRANSPORTATION

Finding 11 - Circulation Plan

In accordance with Section CCC 40.350.030(B) (2), the purpose of the circulation plan is to ensure access to the proposed development and to provide adequate cross-circulation in a manner which allows subsequent developments to meet cross circulation standards. Staff finds by the evidence submitted that there is no feasibility of cross circulation roads within and in the vicinity of this development that could reasonably accomplish this purpose and therefore complies with the standard. The Examiner finds no basis for disagreement with the Staff conclusion.

Finding 12 - Roads

NE 29th Avenue is classified as a 2-lane Collector (C-2). The minimum half-width right-of-way dedication and frontage improvements along this road in accordance with CCC Table 40.350.030-2 and Standard Details Manual, Drawing #12 include:

- A minimum half-width right-of-way of 30 feet
- A minimum half-width roadway of 19 feet
- Curb/ gutter and a minimum detached sidewalk width of 6 feet
- Landscaping per Section 'G' of Standard Details Manual

The proposed improvements for this road comply with the provisions of CCC 40.350.

Public Street "A" and Public Court "B" are classified as urban cul-de-sac streets. The right-of-way dedication/easement and improvements for this road in accordance with CCC Table 40.350.030-4 and Standard Detail Manual, Drawing #15 & #28 include:

- A minimum right-of-way/easement of 46 feet
- A minimum roadway width of 26 feet
- Curb/gutter and a minimum sidewalk width of 5 feet

The proposed improvements for these roads comply with provisions of CCC 40.350.

Public Court "C" is classified as an urban short cul-de-sac street. The right-of-way dedication/easement and improvements for this road in accordance with CCC 40.350 and Standard Detail Manual, Drawing #16 & #29 include:

- A minimum right-of-way/easement of 42 feet
- A minimum roadway width of 24 feet
- Curb/gutter and a minimum sidewalk width of 5 feet

The proposed improvements for this road comply with provisions of CCC 40.350.

Cul-de-sacs - Staff finds that the cul-de-sacs for Public Court "B" and "C" do not comply with CCC 40.350. The Applicant is proposing a 5 foot wide public utility easement for Public Court "B" and a 4.5 foot wide public utility easement for Public Court "C". Both of these cul-de-sacs are required to have 5 foot wide sidewalks and a 5 foot wide public easement for pedestrian access consistent with Exhibit 23 (see bottom drawing) . The public utility easement is required to be placed behind the sidewalk and not allowed within the sidewalk area. (See Condition a-4)

Sidewalks Easements – The Applicant proposes sidewalks and clear spaces within public easements (4.5, 8.5, or 9.5 in width); however, the Examiner is not supporting this ownership option and is requiring that the sidewalks and clear spaces be part of the public right-of-way. Under CCC Chapter 40.350 Transportation and Circulation, Drawings 15 and 16 (note #2), it states that sidewalk may be in easement in lieu of right-of-way. Management Decision¹ MD-DS1032 provides for allowing sidewalks within easements only when they cannot be located within the established public right-of-way or private roadway tract due to natural features that should be preserved (see Exhibit 19). As the Examiner laid out in Finding 1 this is not permitted. The unique situation contemplated by this management decision does not exist in this plat; therefore, sidewalks and clear spaces should not be allowed within the proposed public easements. The final plat should identify sidewalks and road clear spaces within right-of-way to be dedicated, not in public easements. (See Condition A-1)

Finding 13 - Access

In compliance with Section CCC 40.350.030(B) (4) (c) (2). No access onto NE 29th Avenue, a collector road, shall be allowed since an access onto the proposed onsite road with the lower classification can be provided. (See Condition a-5)

Finding 14 - Sight Distance

The approval criteria for intersection sight distances are found in CCC 40.350.030(B) (8). This section establishes minimum sight distances at intersections and driveways. (See Condition a-6)

Finding 15 – Pedestrian/Bicycle Circulation

The Applicant is proposing a 10 foot wide pedestrian walkway from the northerly end of Public Court “C” to the Parks and Recreation property to the north of the site. All sidewalks, pedestrian walkways, driveway aprons, and road intersections shall comply with the Americans with Disabilities Act. (See Condition a-7)

Finding 16 - Landscaping

Landscaping is required for the frontage of NE 29th Avenue (see Condition A-8).

Conclusions

Based upon the development site characteristics, the proposed transportation plan, the requirements of the County's transportation ordinance, and the findings above, the proposed preliminary transportation plan meets the requirements of the county transportation ordinance, subject to conditions.

STORMWATER:

Finding 17 - Applicability

The Stormwater and Erosion Control Ordinance CCC 40.380, adopted July 28, 2000, applies to development activities that result in 2,000 square feet or more of new impervious area

¹. When an interpretation of code is necessary due to unclear code language, the Development Services Manager will issue a Management Decision. Staff then recommends these interpretations to the Board of County Commissioners for adoption as part of the biannual code amendment process.

within the urban area; The platting of single-family residential subdivisions in an urban area; and all land disturbing activities, except those exempted in Section 40.380.030(A).

This project will create more than 2000 square feet of new impervious surface, involves platting of a single-family residential subdivision, and it is a land disturbing activity not exempted in Section CCC 40.380.030(A). Therefore this development shall comply with the Stormwater and Erosion Control Ordinance CCC 40.380.

As the Hearing Section above notes, several neighbors raised concern over the issue of storm water and their present difficulties with the water flow from this site. I find Mr. Safayi's response also noted above to be persuasive and also agree that there is no legal authority to require building of a ditch along the property lines to catch the flowing water. I find that compliance with the Storm Water ordinance is likely to improve the existing situation, but red flag the concerns raised by the citizens to encourage extra careful review and analysis of all the assumptions and calculations during the engineering review.

The erosion control ordinance is intended to minimize the potential for erosion and a plan is required for all projects meeting the applicability criteria listed in CCC 40.380.050. This project is subject to the erosion control ordinance.

Finding 18 - Stormwater Proposal

The project proposes to achieve the required stormwater quality control for runoff from the pollution-generating surfaces by a series of catch basins. Runoff will be conveyed from the subdivision roads A, B and C and NE 29th Avenue to a Stormfilter treatment system which will be sized and conform to Section CCC 40.380. The stormwater will be released to the detention pond which is 0.17 acres in size and is located just to the south of proposed Lot 16. The stormwater will be released to the existing drainage way on the east side of NE 29th Avenue and flow east.

A Stormfilter manhole will be used for water quality. The stormwater from the internal streets and the southern portion of NE 29th Avenue will be conveyed to the manhole in Road A. The stormwater from the portions of NE 29th Avenue that cannot be conveyed to the manhole in Road C will be treated with either stormfilter catch basins or another Stormfilter manhole positioned in the low spot in the right-of way on NE 29th Avenue.

A diversion swale will be constructed along the north side of the property to convey off site water to the existing ditch along NE 20th Avenue. The water will then be conveyed underneath NE 29th Avenue to the existing drainage way.

Finding 19 - Site Conditions and Stormwater Issues

The majority of the site has slopes of 5% to 10% and contains meadow and pasture land and two mobile homes which will be removed prior to development of the site. The preliminary stormwater report indicates that the developed site will contain 2.14 acres of impervious area consisting of 1.10 acres of roof area and 1.04 acres of impervious area due to paved surfaces, sidewalks and driveways.

The project proposes to convey runoff from this development to the detention facility which will be in a tract dedicated to Clark County and publicly maintained. The detention pond will be designed to cut the flow rate leaving the site during the 2-year storm in half, and maintain the existing flow rates of the 10 and 100 year design storms. In accordance with the provisions of Section CCC 40.380.030(C) (1)(g), no development within an urban area shall be allowed to materially increase or concentrate stormwater runoff onto an adjacent property or block existing drainage from adjacent lots. The project will be required to comply with these provisions. (See Condition a-9)

The 1972 USDA, SCS soil survey of Clark County shows the site to be underlain by Gee Silt Loam (Ge B) soils classified by AASHTO as A-6 soils. Infiltration rates are low and infiltration is not proposed with this project.

Finding 20 - Erosion Control

The erosion control ordinance is intended to minimize the potential for erosion and a plan is required for all projects meeting the applicability criteria listed in CCC 40.380.020. This project is subject to the erosion control ordinance.

Conclusion

Based upon the development site characteristics, the proposed stormwater plan, the requirements of the County's stormwater ordinance, and findings above, the proposed preliminary stormwater plan is feasible subject to conditions. Therefore, the requirements of the preliminary plan review criteria are satisfied.

FIRE PROTECTION:

Finding 21

Tom Scott (in the Fire Marshal's Office) reviewed this application. Tom can be reached at (360) 397-2375 x 4095 or 3323 if there are any questions regarding the following review (The site is in Clark County Fire District 5):

- a. Building construction occurring subsequent to this application shall be in accordance with the provisions of the county's building and fire codes. Additional specific requirements may be made at the time of building construction as a result of the permit review and approval process. (See Condition B-1)
- b. Fire flow in the amount of 1000 gallons per minute supplied for 60 minute duration is required for this application. The Applicant has submitted documentation from the water purveyor indicating that the required fire flow is available at the site. Water mains supplying fire flow and fire hydrants shall be installed, approved and operational prior to final plat approval. (See Condition a-10)
- c. Fire hydrants are required for this application. The indicated number and spacing of the fire hydrants is adequate. Hydrants shall be installed per Fire Marshal standards with locations approved by the Fire District Chief. (See Condition a-10)

- d. The roadways and maneuvering areas as indicated in the application meet the requirements of the Clark County Road Standards. Provide an unobstructed vertical clearance of not less than 13.5 feet, with an all weather driving surface and capable of supporting the imposed loads of fire apparatus. (See Condition a-11)

HEALTH DEPARTMENT:

Finding 22

Submittal of a "Health Department Evaluation Letter" is required as part of the Final Construction Plan Review application. If the Evaluation Letter specifies that an acceptable "Health Department Final Approval Letter" must be submitted, the Evaluation Letter will specify the timing of when the Final Approval Letter must be submitted to the county (e.g., at Final Construction Plan Review, Final Plat Review or prior to occupancy). The Health Department Evaluation Letter will serve as confirmation that the Health Department conducted an evaluation of the site to determine if existing wells or septic systems are on the site, and whether any structures on the site have been/are hooked up to water and/or sewer. (See Condition D-7)

UTILITIES:

Finding 23

The Applicant has submitted utility reviews from the Clark Public Utilities and the Hazel Dell Sewer District indicating that public water and sewer is available to the subject site. All lots in the proposed plat must connect to an approved public sewer and water system. A copy of the final acceptance letter from the sewer and water purveyor should be submitted to the Health Department with the final plat mylar. The Applicant needs to comply with all requirements of the purveyor. (see Condition D-8)

IMPACT FEES:

Finding 24

Park (PIF), Traffic (TIF), and School (SIF) Impact Fees apply to this development. The site is within Park District 10 which has a total PIF of \$1,534.00 per lot (Acquisition - \$1,094, Development - \$440), the Mt. Vista District which has a TIF of \$2,489.16 per lot, and the Ridgefield School District which has a SIF of \$3,559.00 per lot.

If a building permit application is received more than three years following the preliminary plat approval, the Impact Fees will be recalculated according to the then current ordinance. This should be noted on the face of the final plat. (See Condition B-3 & C-7)

SEPA

Determination of Non-Significance (DNS).

Clark County, as lead agency for review of this proposal, has determined that this proposal does not have a probable significant adverse impact on the environment. An Environmental Impact Statement (EIS) is not required under RCW 43.21C.030 (2) (e). This decision was made after review of a completed environmental checklist and other information on file with the County. The public comment deadline expired on October 13, 2004 without an appeal.

DECISION

Based upon the findings and conclusions stated above, the Hearing Examiner APPROVES this preliminary plat as it shall be revised to comply with the conditions of this approval with the understanding that the Applicant is required to adhere to all applicable codes and laws, and is subject to the following conditions of approval:

Conditions of Approval

A. Conditions that must be met prior to Final Plat Approval:

- A-1 The final plat shall identify sidewalks and clear spaces within right-of-way to be dedicated, not in public easements. In addition, the plat shall be revised not to include these areas within the lots (see Finding 1 and 12).
- A-2 All existing structures on the site shall be removed prior to final plat approval (see Finding 4).
- A-3 The Applicant shall reimburse the County for the cost of concurrency modeling incurred in determining the impact of the proposed development, in an amount not to exceed \$1,500. The reimbursement shall be made within 60 days of issuance of the decision with evidence of payment presented to staff at Clark County Public Works. (See Finding 9)
- A-4 A 5-foot wide sidewalk and public utility easement is required around the cul-de-sacs for Public Court "B" and "C". The public utility easement shall be placed behind the sidewalk area. (See Finding 12 and Exhibit 23 - bottom drawing)
- A-5 No lots shall be allowed to access NE 29th Avenue (See Finding 13).
- A-6 Evidence shall be submitted with the proposed construction drawings that show this development complies with intersection sight distance standards (see Finding 14).
- A-7 A 10-foot wide pedestrian walkway between Lot 14 and Lot 15 will be constructed from Public Court "C" cul-de-sac to the Parks and Recreation property to the north (see Finding 15).
- A-8 Landscaping along the frontage of NE 29th Avenue shall comply with Appendix G of the Transportation Standards (see Finding 16).
- A-9 The Applicant shall submit and receive approval of a capacity analysis of the downstream conveyance system; and conduct an analysis of off-site water quality impacts extending a minimum of one-fourth of a mile downstream from the stormwater outfall (see Finding 19).

- A-10 Water mains supplying fire flow and fire hydrants shall be installed, approved and operational. Required hydrants shall be installed per Fire Marshal standards with locations approved by the Fire District Chief. (See Finding 21b & 21c)
- A-11 Provide an unobstructed vertical clearance of not less than 13.5 feet, with an all weather driving surface and capable of supporting the imposed loads of fire apparatus (see Finding 21d).

B. Conditions that must be met prior to Building Permit Issuance:

- B-1 Building construction occurring subsequent to this application shall be in accordance with the provisions of the county's building and fire codes. Additional specific requirements may be made at the time of building construction as a result of the permit review and approval process.
- B-2 Prior to issuance of any building or grading permits for the development site, the Applicant shall obtain written approval from Clark County Department of Public Works of the Applicant's Traffic Control Plan (TCP). The TCP shall govern all work within or impacting the public transportation system. (See Finding 10)
- B-3 School, Park and Traffic Impact Fees are required for lots in this plat - \$3,559.00 (Ridgefield School District), \$1,534.00 (Acquisition - \$1,094, Development - \$440 for Park District 10), and \$2,489.16 (Mt. Vista Transportation sub-area) respectively. Impact fees shall be paid prior to issuance of a building permit for each lot. If a building permit application is made more than three years following the date of preliminary plat approval, the impact fees will be recalculated according to the then-current ordinance rate.

C. Notes Required on Final Plat

The following notes shall be placed on the final plat:

C-1 Setbacks:

"The following setbacks apply to the proposed plat (see Finding 3):

- Twenty foot front setback for all buildings
- Ten foot street side setback for lot 13 along Public Court "C" and lot 12 along Public Court "B"
- Five foot standard setback for all other side and rear setbacks in the plat

C-2 Mobile Homes:

"Placement of Mobile/Manufactured Homes is prohibited."

C-3 Archaeological:

"If any cultural resources are discovered in the course of undertaking the development activity, the Office of Archaeology and Historic Preservation in Olympia and Clark County Community Development shall be notified. Failure to comply with these State requirements may constitute a Class C Felony, subject to imprisonment and/or fines."

C-4 Critical Aquifer Recharge Areas:

"The dumping of chemicals into the groundwater and the use of excessive fertilizers and pesticides shall be avoided. Homeowners are encouraged to contact the State Wellhead Protection program at (206) 586-9041 or the Washington State Department of Ecology at 800-RECYCLE for more information on groundwater /drinking supply protection."

C-5 Erosion Control:

"Building Permits for lots on the plat shall comply with the approved erosion control plan on file with Clark County Building Department and put in place prior to construction."

C-6 Driveways:

"All residential driveway approaches entering public roads are required to comply with CCC 40.350. No direct access is allowed onto NE 29th Avenue."

C-7 Impact Fees:

"In accordance with CCC 40.610, the School, Park and Traffic Impact Fees for lots in this plat is: \$3,559.00 (Ridgefield School District), \$1,534.00 (Acquisition - \$1,094, Development - \$440 for Park District 10), and \$2,489.16 (Mt. Vista Transportation sub-area) respectively. The impact fees for lots on this plat shall be fixed for a period of three years, beginning from the date of preliminary plat approval, dated _____, and expiring on _____. Impact fees for permits applied for following said expiration date shall be recalculated using the then-current regulations and fees schedule."

D. Standard Conditions

This development proposal shall conform to all applicable sections of the Clark County Code. The following conditions shall also apply:

D-1 Land Division:

Within 5 years of preliminary plan approval, a Fully Complete application for Final Plat review shall be submitted.

D-2 Pre-Construction Conference:

Prior to construction or issuance of any grading or building permits, a pre-construction conference shall be held with the County.

D-3 Erosion Control:

- a. Prior to construction, the Applicant shall submit and obtain County approval of a final erosion control plan designed in accordance with CCC 40.380.
- b. For land divisions, a copy of the approved erosion control plan shall be submitted to the Chief Building Official prior to final plat recording.
- c. Erosion control facilities shall not be removed without County approval.
- d. Prior to construction, erosion/sediment controls shall be in place. Sediment control facilities shall be installed that will prevent any silt from entering infiltration systems. Sediment controls shall be in place during construction and until all disturbed areas are stabilized and any erosion potential no longer exists.

D-4 Excavation and Grading:

- a. Excavation/grading shall be performed in compliance with Appendix Chapter 33 of the Uniform Building Code (UBC).
- b. Site excavation/grading shall be accomplished, and drainage facilities shall be provided, in order to ensure that building foundations and footing elevations can comply with CCC 14.04.252.

D-5 Stormwater:

Prior to construction, the Applicant shall submit and obtain County approval of a final stormwater plan designed in conformance to CCC 40.380.

D-6 Transportation:

Prior to construction, the Applicant shall submit and obtain County approval of a final transportation design in conformance to CCC 40.350.

D-7 Health Department:

Submittal of a "Health Department Evaluation Letter" is required as part of the Final Construction Plan Review application. If the Evaluation Letter specifies that an acceptable "Health Department Final Approval Letter" must be submitted, the Evaluation Letter will specify the timing of when the Final Approval Letter must be submitted to the county (e.g., at Final Construction Plan Review, Final Plat Review or prior to occupancy). The Health Department Evaluation Letter will serve as confirmation that the Health Department conducted an evaluation of the site to determine if existing wells or septic systems are on the site, and whether any structures on the site have been/are hooked up to water and/or sewer.

D-8 Utilities:

A copy of the final acceptance letter from the sewer and water purveyor shall be submitted to the Health District with the final plat mylar. The Applicant shall comply with all requirements of the purveyor.

Dated this _____ day of October, 2004

**J. Richard Forester
Hearing Examiner**

NOTE: *Only the decision and the condition of approval are binding on the Applicant, owner or subsequent developer of the subject property as a result of this order. Other parts of the final order are explanatory, illustrative and/or descriptive. There may be requirements of local, state, or federal law, or requirements which reflect the intent of the Applicant, the county staff, or the Hearings Examiner, but they are not binding on the Applicant as a result of the final order unless included as a condition.*

An **appeal** of any aspect of the Hearing Examiner's decision, except the SEPA determination, may be appealed to the Board of County Commissioners only by a party of record. A party of record includes the Applicant and those individuals who signed the sign-in sheet or presented oral testimony at the public hearing, and/or submitted written testimony prior to or at the Public Hearing on this matter.

The appeal shall be filed with the Board of County Commissioners, 1300 Franklin Street, Vancouver, Washington, 98668, within fourteen (14) calendar days from the date the notice of final land use decision is mailed to parties of record.

Any appeal of the final land use decisions shall be in writing and contain the following:

1. The case number designated by the County and the name of the Applicant;
2. The name and signature of each person or group (petitioners) and a statement showing that each petitioner is entitled to file an appeal as described under Section 40.510.030 (H) of the Clark County Code. If multiple parties file a single petition for review, the petition shall designate one party as the contact representative with the Development Services Manager. All contact with the Development Services Manager regarding the petition, including notice, shall be with this contact person;
3. The specific aspect(s) of the decision and/or SEPA issue being appealed, the reasons why each aspect is in error as a matter of fact or law, and the evidence relied, on to prove the error; and,
4. If the petitioner wants to introduce new evidence in support of the appeal, the written appeal also must explain why such evidence should be considered, based on the criteria in subsection 40.510.030(H)(3)(b);
5. A check in the amount of \$279.00 (made payable to the Clark County Board of County Commissioners).